

(1980) 07 AHC CK 0013
In the Allahabad High Court
Case No : ED Reference No. 201 of 1978

Smt. Vindoor Bai	Vs	APPELLANT
Controllar of Estate Duty		RESPONDENT

Date of Decision : 07-07-1980

Acts Referred:

Estate Duty Act, 1953 — Section 36, 40, 5, 7
Partnership Act, 1932 — Section 14, 42

Citation : (1980) 4 TAXMAN 467

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; A. Gupta, for the Respondent

Judgement

C.S.P. Singh, J.—The Tribunal has referred the following questions for our opinion: 1. Whether, on the facts and in the circumstances of the case, the goodwill of the firm could be valued for purposes of estate duty?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the firm stood dissolved on the death of the deceased-partner?

3. Whether, on the facts and in the circumstances of the case, the method of valuation adopted by the Tribunal for valuing the goodwill of the firm was correct in law?

The deceased, Nand Lal, died on December 29, 1968. At the time of his death he was a partner in the firm, M/s. Govardhan Das Ahuja, which was carrying on business of contractors and engineers at 122/730, Nandpuri, Shastri Nagar, Kanpur, his share being 12% in the profits and losses of that firm. The Asst. Controller of Estate Duty while computing the value of the estate of the deceased included in it the value of the deceased's share in the goodwill of the firm. He calculated the value of the goodwill at Rs. 4,71,000. The method adopted for the valuation was this. He worked out the average profits of the firm for three years

and deducted therefrom interest at the rate of 9% on the invested capital and remuneration at Rs. 6,000 per annum for six working partners. According to this method, the value came to Rs. 4,71,000, and as the deceased's share was 12%, it was computed at Rs. 56,520. The accountable persons filed an appeal before the Appellate Controller of Estate Duty, and contended that the firm did not have any goodwill, and that in any event the value of the goodwill was inflated. The Appellate Controller held that interest at the rate of 10% per annum on the invested capital should have been deducted instead of 9%, and reduced the valuation of the goodwill accordingly. He did not accept the other contentions. An appeal against this was filed before the Tribunal. The contention before the Tribunal was that the firm had no goodwill, as it had been dissolved thrice between 1959 and 1968, and further that as the business depended on the personal skill and labour of the partners, a firm of this nature did not enjoy any goodwill at all. It was also urged that the rate of interest on the invested capital which had been put at 10% was low and that remuneration to partners should have been allowed at Rs. 12,000 per annum. The Tribunal held that although the firm had been dissolved thrice between 1959 and 1968, the deceased continued to be a partner in the new firms, which were formed after dissolution. It was also held that the goodwill of a firm was an asset and that the firm had goodwill. It repelled the assessee's contention that the goodwill of the firm ceased with the death of the partner on the ground that the partnership deed contained no provision for the continuance of the partnership even in the event of the death of one of the partners. It, however, reduced the valuation of the goodwill and fixed it at Rs. 3,28,700 and the share of the deceased therein at Rs. 39,444. We propose to deal with the second question first, for, on the facts of the case, the answer to the second question may have some repercussion on the answer to be given to the first question. The deceased was a partner in the firm, M/s. Govardhan Das Ahuja, till his death. This firm was carrying on the business of contractors and engineers at 122/730, Nandpuri, Shastri Nagar, Kanpur, and the deceased's share was 12% in the profits and losses of that firm, which consisted of 12 partners. The rights of the partners were regulated by a deed of partnership executed on July 17, 1968. The Tribunal has found that the partnership disclosed that there was no provision in the deed of partnership as to the result of the death of a partner. In the absence of any provision in the partnership deed setting out the result of the death of a partner, the matter would be governed by section 42 of the Partnership Act. Section 42 by clause (c) provides for the dissolution of the partnership in the event of the death of a partner. This is made subject to a contract between partners. As the partnership deed does not provide for the continuance of the partnership on the death of the partner, the firm stood dissolved on the death of the deceased.

2. Coming to the first question, section 14 of the Partnership Act states that, subject to contract between the partners, the property of the firm includes the goodwill of the business. Thus, the goodwill of the business is the property of the firm. This was so held by the Supreme Court in the case of Khushal Khemgar

Shah and Others Vs. Khorshed Banu Dadiba Boatwalla and Another, . The deceased continued as a partner of the firm till the time of his death. There is nothing in the partnership deed to indicate that he was excluded from a share in the goodwill of the firm. This being so, the deceased had a share in the goodwill of the firm along with his proportionate share in the other property of the firm. This share devolved upon his legal representatives : See Khushal Khemgar Shah and Others Vs. Khorshed Banu Dadiba Boatwalla and Another, . Counsel for the assessee, however, urged that the firm had no goodwill as it was a firm of contractors. The goodwill, if any, depended on the skill of the partners and on the death of one of the partners, and as a consequence of the dissolution of the firm, the goodwill, if any, became non-existent and valueless.

3. Now, in view of section 14 of the Partnership Act, it cannot be denied that the goodwill of a partnership is an asset of the partnership. But the section does not lay down that every partnership has a goodwill, or that the goodwill of every partnership has any substantial value. Now, u/s 5 of the Estate Duty Act, duty is chargeable on the principal value of the property, which passes on the death of a person. Section 36 of the Act lays down the method of estimating the principal value of the property. It requires the Controller to estimate the principal value of the property by reference to the price it would fetch if sold in the open market at the time of the deceased's death. This being so in cases where a firm has goodwill, as it constitutes the property of the firm, and as every partner has a share in the goodwill, it passes on the death of the partner, and has to be evaluated. But from this it does not follow that every partnership has a goodwill, and as soon as a partner dies, the non-existent goodwill has to be evaluated. In every case, it has to be seen as to whether the firm of which the deceased was a partner had a goodwill. Now, what is the goodwill of a firm?

4. In IRC v. Mutter & Co.'s Margarine Ltd. [1901] AC 217 (HL), Lord Macnaghten observed on p. 223:

What is goodwill ?It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has power of attraction sufficient to bring customers home to the source from which it emanates. Goodwill is composed of a variety of elements. It differs in its composition in different trades and in different businesses in the same trade. One element may preponderate here and another element there. To analyse goodwill and split it up into component parts, to pare it down as the Commissioners desire to do until nothing is left but a dry residuum ingrained in the actual place where the business is carried on while everything else is in the air, seems to me to be as useful for practical purposes as it would be to resolve the human body into the various substances of which it is

said to be composed. The goodwill of a business is one whole, and in a case like this, it must be dealt with as such.

5. Lord Lindley dealing with the concept of goodwill on p. 235 spoke thus:

Goodwill regarded as property has no meaning except in connection with some trade, business, or calling. In that connection I understand the word to include whatever adds value to a business by reason of situation, name and reputation, connection, introduction to old customers, and agreed absence from computation, or any of these things, and there may be others which do not occur to me. In this wide sense, goodwill is inseparable from the business to which it adds value, and, in my opinion, exists where the business is carried on. Such business may be carried on in one place or country or in several, and if in several there may be several businesses, each having a goodwill of its own....

The goodwill of a business usually adds value to the land or house in which it is carried on if sold with the business...

6. Lindley on Partnership, 13th Edition, on p. 463, discussing the concept of goodwill, states:

The term goodwill can hardly be said to have any precise signification. It is generally used to denote the benefit arising from connection and reputation; and its value is what can be got for the chance of being able to keep that connection and improve it. Upon the sale of an established business its goodwill may have a marketable value, whether the business is that of a professional man or of any other person, but whether or not the goodwill has a saleable value is a question of fact to be determined in each case. But it is plain that goodwill has no meaning except in connection with a continuing business; it may have no value except in connection with a particular premises, and may be so inseparably connected with it as to pass with it under a will or deed without being specially mentioned.

7. And then again on p. 466, after discussing various cases, sums up the discussion by stating:

It follows from the foregoing observations that the goodwill of a valuable partnership business may be practically unsaleable and worthless, at least to anyone except a former partner desiring to continue the business of the firm. It is only so far as the goodwill has a saleable value, that it can be regarded as an asset of any partnership for accounting purposes.

8. Reference at this stage may be made to the decisions in the cases, *Wilson v. Williams* [1892] 29 LR Ir 176, *Arundell v. Bell* [1883] 52 LJ Ch 537 (CA), *Burchell v. Wilde* [1900] 1 Ch 551 (CA), *James v. James* [1889] 22 QBD 669 (QB) and *Fitch v. Dewes* [1921] 2 AC 158 (HL), on which the following comments on p. 466 in the 13th Edition of Lindley on Partnership are to be found:

It is only so far as the goodwill has a saleable value, that it can be regarded as

an asset of any partnership for accounting purposes.

9. We have referred to these cases in order to show that there are partnership firms, which carry no goodwill at all. Mutter's case [1901] AC 217 (HL) seems to have established the proposition that it is only when a business is established that it carries a goodwill. It follows from this discussion that a newly established business may not have acquired any goodwill, for goodwill appears to be the result of carrying on business for a reasonable length of time.

10. The Supreme Court in the bank nationalisation case in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, , commenting on the meaning of goodwill, observed on p. 385:

Goodwill of a business is an intangible asset; it is the whole advantage of the reputation and connections formed with the customers together with the circumstances making the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years or in excess of normal amounts because of its reputation, location and other features: *Trego v. Hunt* [1896] AC 7. Goodwill of an undertaking, therefore, is the value of the attraction to customers arising from the name, and reputation for skill, integrity, efficient business management, or efficient service.

11. The Madras High Court in *Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras*, described goodwill in the following manner:

Goodwill is the magnetic quality of a particular trade or business which attracts custom to it as a matter of course. This quality springs from and is developed by various contributing factors that earn a reputation for honest dealing, quality and standard. It is founded on the belief and faith of the customer and is commonly built up in relation to a particular type of manufacture or production of articles identified by a trade mark which becomes widely known to the public and by which the custom takes it for granted that it represents what they wish for. The standing of the business, the personalities who are engaged in the business, the location in which it is carried on and the like are contributing factors of goodwill. Where a business involves no indistinguishable features and deals in standard articles manufactured by someone else which one can get from anywhere, not merely from a particular dealer, there is hardly any possibility of there being a goodwill attached to such business.

12. This appears to have been quoted with approval in *Smt. Kamlawati Raizada Vs. Controller of Estate Duty*, .

13. Now, did this firm of contractors and engineers have a goodwill? We have in the earlier part of our judgment noticed the various cases which have laid down the concept of a goodwill. We have also seen that the Partnership Act includes goodwill as constituting the property of the firm. This, however, is not to say that every firm must have a goodwill. Goodwill is acquired during the course of a

number of years of business. It rarely springs from the very institution of the firm. To say that the goodwill of a firm is an asset of a firm is a far cry from holding that every firm has a goodwill. There are some firms which depend solely on the professional skill of a particular partner, which may have- no goodwill at all. This is the reason why Lindley in his 13th Edition on Partnership, on p. 466, says that it is only so far as the goodwill has a saleable value, that it can be regarded as an asset of any partnership for accounting purposes. In *Wilson v. Williams* [1892] 29 LR Ir 176, the Irish Court held that a stockbroker business has no goodwill. This decision was explained and distinguished in *Hill v. Fearis* [1905] 1 Ch 466 (Ch D), and it was held that a broker's business in that case had a goodwill. In *Arundell v. Bell* [1883] 52 LJ Ch 537 (CA), it was held that the goodwill of a solicitor's business has no value. In *Burchell v. Wilde* [1900] 1 Ch 551 (CA), the court proceeded on the ground that a solicitor's business has a goodwill. So, it cannot be said as a matter of law that a firm of contractors and engineers has no goodwill at all. In this case, the firm had 12 partners and only the deceased had died. There is no evidence on the record to establish that the firm did not have a goodwill; on the contrary, the growing business of the assessee as reflected by the profits did indicate that the firm had acquired a reputation for efficient work. The fact that the firm had been dissolved three times does not necessarily lead to the result, in the face of the huge profits, being earned by the firm, within the three years" period referred to by the lower Tribunal, that the firm did not enjoy an established reputation. Thus, in the circumstances of the case, it is not possible to hold that the firm did not have a goodwill or that the Tribunal misdirected itself in law in holding that it had one.

14. Now, let us see how the other High Courts have approached this problem. The Gujarat High Court in the case of *Mrudula Nareshchandra Vs. Controller Estate of Duty*, has held that although a firm has a goodwill, it cannot be included in the principal value of the estate of a deceased as it cannot be evaluated u/s 40 of the Act. This view has not been followed by the Madras and Calcutta High Courts, as also the Punjab High Court. In *S. Devaraj Vs. Commissioner of Wealth-tax*, the deceased was a partner in a managing agency firm. It was contended that a managing agency firm had no goodwill, and in any event nothing having been realised on account of the share in the goodwill, nothing could be included in the estate on that account. The Madras High Court held that the interest of the deceased in the goodwill of the firm vested in the accountable persons and had to be included in the value of the estate. The factum of non-receipt of the deceased's share was immaterial. In *Controller of Estate Duty Vs. Ibrahim Gulam Hussain Currimbhoy*, , the Madras High Court disagreed with the view expressed by the Gujarat High Court in *Mrudula Nareshchandra Vs. Controller Estate of Duty*, .

15. In *Smt. Surumbayi Ammal Vs. Controller of Estate Duty*, , the deceased was a partner in several firms which were partnerships at will. There was no provision for sharing of the goodwill on the dissolution of the firms, in the case of death or retirement of any partner. On the death of the deceased the firms were dissolved

and the accountable person was paid an amount equal to 1/6th share of the deceased, and no value was attached to the goodwill of the firms. The names of the dissolved firms were adopted by the new partnership constituted by the surviving partners. The question arose as to whether the value of the share of the deceased in the goodwill of the dissolved firms should be included in the estate of the deceased. The Madras High Court held that it can be so included, notwithstanding the fact that the accountable person did not get any share in the goodwill. The case was decided on the principle that the deceased's share in the goodwill had passed on his death.

16. The Punjab High Court in *State Vs. Prem Nath*, , held that notwithstanding the stipulation in the partnership deed to the effect that the death of a partner shall not dissolve the firm, and the surviving partners were entitled to carry on the business, the goodwill of firm being an asset of the firm, the share of the deceased in the goodwill along with the other assets devolved for the purposes of estate duty, and had to be included in the value of the estate of the deceased.

17. In *Controller of Estate Duty Vs. Annaraj Mehta and Deoraj Mehta*, , the partnership deed provided for the continuance of the partnership even in the event of death or retirement of any partner. One of the partners died, and the question arose as to whether his share in the goodwill of the firm could be included in the valuation of the estate. After considering the decisions of the Punjab High Court and the Gujarat High Court, it was held that the entirety of the interest of the deceased partner, which necessarily included goodwill, had to be included in the valuation of the estate of the deceased.

18. These cases establish that the goodwill of a firm is an asset, and notwithstanding the fact that the deceased partner is excluded from the goodwill, and the firm did not dissolve on his death, goodwill is property, which passes for purposes of estate duty.

19. It will thus be seen that the weight of authority is in favour of the view that we have expressed earlier, viz., that the goodwill of a firm has to be included in the principal value of the estate. We may at this stage give our reasons for not agreeing with the Gujarat High Court's view that the goodwill of a firm cannot be included for purposes of estate duty as it cannot be evaluated under s. 40 of the Act. The reasons given by the Gujarat High Court is that the goodwill of a firm cannot be evaluated as it is incapable of earning money, left to itself. This approach does not, with respect, commend itself to us. Under the Estate Duty Act each and every right, which passes on death, has to be evaluated. The evaluation has to be done on the basis of an assumption that there is a willing purchaser, for the right or property, that is a fundamental assumption that has to be made in all cases, where evaluation has to be done on the presumed price the article or right would fetch in the open market. In this sort of the evaluation, it would not be proper to put the question as to whether the right or article left to itself is capable of earning money. It is also worthwhile pointing out that it is the settled practice to value goodwill for estate duty. In *Dymond on Death Duties* and

Batliboi's book on Accountancy, the methods adopted by them are not unreal or imaginary. Thus, we see no reason to exclude goodwill from inclusion in the estate of a deceased person.

20. The next question is as to whether the goodwill enjoyed by the firm could be evaluated. The firm stood dissolved as there was no provision for the continuance of the firm on this dissolution. The partnership agreement did not contain any provision for excluding legal representatives of the deceased partner from a share in the value of the goodwill. Thus, the legal representatives of the deceased were entitled to the value of the goodwill as also the value of the other assets of the firm on the dissolution of the partnership. Now, a composite reading of sections 5, 7 and 40 of the Estate Duty Act shows that on the death of a person the duty has to be paid on the principal value of the property of the deceased which passes on his death. Further, in view of section 5, when a death occurs and the interest in a property ceases on such death the property shall be deemed to pass to the extent to which a benefit accrues or arises by cesser of such interest. The value of this benefit has to be evaluated u/s 40, and it is this value which has to be taken into account while computing the value of the estate of the deceased.

21. Coming to the third question, the Assistant Controller calculated the value of the goodwill by taking the following facts into account.

22. Average proportionate capital employed for three years, viz., 1966-67, 1967-68 and 1968-69, and the average proportionate profit for this period. He then made an allowance of interest at the rate of 9% on the average proportionate capital, and also deducted an amount of Rs. 36,000 as remuneration to six working partners at the rate of Rs. 6,000 per annum per partner. He deducted the interest on capital, and the remuneration paid to the partners from the average proportionate profit, and calculated the net profit at Rs. 1,50,941. Thereafter, he worked out the valuation of the goodwill by multiplying it by three. The deceased's share which was twelve per cent, was thus calculated at an amount of Rs. 56,520. On appeal, the Appellate Controller allowed an amount of ten per cent, on the average proportionate capital employed. On further appeal, the Tribunal enhanced the remuneration payable to the partners to an amount of Rs. 81,000 but maintained the three years' purchase formula applied by the Assistant Controller. Counsel urged that the method of valuation adopted for the goodwill was incorrect inasmuch as the method adopted was not appropriate for making the valuation. It has also been urged that the three years' purchase formula has been applied without giving any reason for doing so.

23. Green in his 5th Edition on Death Duties has dealt with the method of evaluating the goodwill of a firm on p. 456. It has been stated:

In other trades and professions there is, especially as respects the smaller concerns, a customary method of valuation for goodwill. This is usually a given

number of years" purchase (which may vary from time to time) of the average profits for a given number of years before the date of valuation. "Profits" here usually means net profits, but sometimes gross figures (before or after management remuneration, interest on capital, etc.) according to the particular trade or profession may be adopted. In these cases (as in those mentioned in the preceding paragraph) the particular method appropriate should normally be readily ascertainable by the accountable parties.

Where there is no customary method of valuation it will be necessary to value the goodwill by some more general method. The first step will almost invariably be to estimate the "maintainable profits" of the business, i.e., the profits a purchaser could reasonably expect it to produce for him. The estimate is generally based in some way on the previous profit record; but in the process due regard must be had to any factors (e.g., the effect of the deceased's death) likely to alter the level of profits in future. If the past record shows fairly steady profits, or profits which though fluctuating do not exhibit any market upward or downward trend, some form of averaging is usual. The length of period considered will depend on the circumstances. It must generally be sufficiently long to make the average a representative one and to counteract the effect of transient influences in particular years.....

In ascertaining the "maintainable profits" of the business for the present purposes, it is usual to deduct reasonable depreciation and management remuneration and corporation tax, but not income tax; moreover any income from investments which are not strictly part of the capital employed in earning the business profits should be excluded.

24. The learned author then states that there are two methods of deducing the value of goodwill. The first is a direct method by which the goodwill is equated with a given number of years' purchase of the amount by which the "maintainable profits" exceed a reasonable return on the capital employed in earning them. The second method is an indirect process consisting in deducing the capital employed in earning the profits from the total value of the business, estimated as the amount upon which the "maintainable profits" would represent a reasonable return to the purchaser for his outlay. He gives an example as to how the goodwill is evaluated by this indirect method. The example being:

the "maintainable profits" of a business are agreed at ₹ 10,000 per annum. It is also agreed that a purchaser could require a return of 12 % per cent, per annum on his outlay and hence would be prepared to pay ₹ 80,000 for the business. The capital employed in earning the profits is ₹ 60,000 leaving ₹ 20,000 as the value of the goodwill.

25. Dymond's Death Duties, 13th Edn., has also discussed this problem on p. 511. It has been stated:

There are two common ways of computing the goodwill value of businesses of a substantial size, viz., the "super-profits" method and the "total capitalisation"

method. The two methods, which are complementary and may often be used as a check upon each other, and which may theoretically give the same results, may conveniently be illustrated by an example (the figures given are purely illustrative and not to be regarded as any indication of the appropriate yields in any particular case). In each case, it is necessary to estimate the probable amount of the future profits (after making a reasonable allowance for management remuneration)-- suppose these are taken at ? 25,000 per annum. Then --

(a) "Super-profits" method:

Estimated value of tangible assets, say

? 100,000

"Interest on capital", at, say, 5 per cent,

on ? 100,000 = ? 5,000 per annum

"Super-profit" = ? 25,000?? 5,000 = ?20,000 per annum

Goodwill at, say, five years" purchase of super-profit

? 20,000 (Equivalent to a 20 percent yield)

? 100,000

Total value of business

? 200,000

(b) "Total capitalisation" method:

Value of whole business estimated on basis of 12? per cent

yield = eight years" purchase of full profits ? 25,000

? 200,000

Less: estimated value of tangible assets

? 100,000

Value of goodwill

? 100,000

In method (b), the value of the tangible assets is taken into account in estimating the yield (12? per cent.) on the basis of which the capitalisation is to be made, but they will not necessarily have to be valued with the same accuracy as under method (a), the value of the whole business being ascertained in one step and the apportionment between tangible assets and goodwill not generally affecting the value of the shares, although an accurate apportionment may be necessary between assets attracting duty at the full rate and assets (industrial

hereditaments, plant and machinery and agricultural property) attracting duty at a reduced rate. The essential difference between the two methods is that in (b) a single yield is adopted for the whole concern, whereas in (a) this is broken down into two separate yields, a lower one in respect of tangible assets and a higher one in respect of goodwill. Although (a), the super-profits method, is popular in accountancy practice, it is in fact more difficult to find reliable standards of comparison for yields either on tangible assets or on goodwill than for yields on businesses as a whole, and both the assumed rate of interest on capital and the number of years' purchase of super-profit taken for the goodwill tend to be arbitrary and unsupported by adequate evidence. In the only case in which this point has come before the courts (*Findlay's Trustees v. IRC* [1938] 22 ATC 437 (Court of Session), a case relating to the goodwill of a newspaper owned by a partnership) the "total capitalisation" method was preferred and the court rejected the testimony of expert witnesses on the question of the value of the goodwill as a distinct item on the ground that they could not produce specific evidence in support of their views. As already said, the two methods are complementary, but it is thought that there is scope for a wider use of "total capitalisation as a primary basis of valuation."

26. Referring to the average period for which the net profits ought to be taken, the learned author has stated "the net profits are often taken on a three years" average. In the case mentioned the court adopted a somewhat lower figure in view of a contract declared in the last year. The case referred to is *Findlay's Trustees v. IRC* [1938] 22 ATC 437. It will be seen that the direct method of evaluation referred to in *Green's Death Duties* is similar to the super-profits method referred to by *Dymond*. In both the cases, the average of the profits of a business of a representative period are calculated after making allowance for management remuneration. According to *Dymond* as also according to *Green*, allowance is made for deduction of profits tax also. This amount is then multiplied by an appropriate years' multiple, and then a fair return on the capital employed is computed. The amount of fair return on the capital employed is deducted from the amount of the estimated purchase price of the profits. The resultant is taken to be the value of the goodwill. The capitalization method referred to by *Dymond* is different from the indirect method of valuation referred to by *Green*, for, in the one case the full profits are multiplied by the multiple of years and from that the value of the tangible assets of the firm are deducted. The resulting figure is taken to be the value of the goodwill. In the indirect method, the return on the capital employed is calculated by reference to an agreed percentage of the capital, and an estimate is made of the amount that a purchaser would pay for buying the business. From this amount deduction is made of the capital employed and the resultant figure is taken to be the value of the goodwill. Thus, there are two generally accepted methods of calculation of goodwill in England, but the learned authors are in agreement that in some cases these methods do not reflect the correct valuation, and ad hoc methods have to be adopted.

27. Let us now see the method of valuation generally accepted in this country. In *CONTROLLER OF ESTATE DUTY WEST BENGAL Vs. BISWANATH RUNGT.*, , the Calcutta High Court referred with approval to Batliboi's book on Advanced Accounting, 22nd Edn., where the method of evaluating the goodwill in this country in accounting circles is set out. The method referred to is to find out the net average profit after deducting interest on the capital outlay and the appropriate cost of service, in case it has not been charged against the net profits. After having determined this, a reasonable return on the capital employed is calculated, and the excess amount of profits is taken to be the super profits. This amount is multiplied by a certain number of years, and the resultant figure is taken to be the value of the goodwill. The method referred to by Batliboi is similar to the super-profits method talked of by Dymond, and referred to by Green. The Patna High Court in the case of *DAS AND COMPANY Vs. COMMISSIONER OF Income Tax, PATNA.*, also seems to have approved of this method, and so also the Madras High Court in *K.A. Subramaniam, Ambi's Cafe Vs. Controller of Estate Duty, Madras.* . Let us see whether the Tribunal has departed from the accepted methods of valuation of a goodwill. The Assistant Controller has averaged three years' profits, found out the average proportionate capital employed, calculated interest on the capital, deducted the remuneration payable to six of the working partners and then deducted the interest on capital plus the remuneration to the six working partners from the average profits, and multiplied the resultant figure by a multiple of three and taken that to be the value of the goodwill. The Tribunal has approved of this method. This method is the direct method talked of by Green, and the super-profits method referred to by Dymond. As has been seen, this method of valuation has been approved by the Calcutta, Patna and Madras High Courts. Batliboi on Accountancy suggests that this method is employed in accountancy circles for evaluating the goodwill. Counsel, however, urged that while calculating the profits, no allowance was made for depreciation, super profits tax. We do not think that it is open to the counsel to urge this point at this stage, for, no such contention was raised before the Assistant Controller or before the Appellate Controller or before the Tribunal, the only contention being that, as the firm was one of contractors and engineers, it had no goodwill, and, secondly, that the multiple of three years taken for calculating the value of the goodwill was not justified. It is, thus, not appropriate to go into this factual question at this stage.

28. Coming now to the question as to whether the three years' multiple that had been taken by the Tribunal was appropriate for evaluating the goodwill. In *CONTROLLER OF ESTATE DUTY WEST BENGAL Vs. BISWANATH RUNGT.*, , one dealing with the valuation of goodwill of a company dealing in minerals and metals, a multiple of four years was applied and upheld. In *K. Ismail Vs. Controller of Estate Duty*, , a case dealing with the goodwill of a firm carrying on business in foodgrains, two years' multiple was taken to be correct. In *Smt. Kamlawati Raizada Vs. Controller of Estate Duty*, , a firm selling chaff cutting machine and parts and supply of stone and contract work, two years' multiple

was applied. There does not appear to be any hard and fast rule regarding the multiple to be applied for evaluating the goodwill of a firm. It all depends on the nature of the business and the prevailing market circumstances. There has to be a certain amount of guess work in an estimate, for, an estimate is an honest guess, and nothing more. In the present case, the assessee had not led any evidence to show that three years' multiple was inappropriate. The firm had been making progressive profits. In 1966-67, it was Rs. 1,13,620, in 1967-68, Rs. 1,90,000. There was a negligible decline in 1968-69, the profit being Rs. 1,63,438. In these circumstances, we do not think that the Tribunal had committed any error of law in taking the three years' multiple.

29. Before we part with this issue, it is necessary to refer to the decision of the Calcutta High Court in the case of Controller of Estate Duty Vs. Annaraj Mehta and Deoraj Mehta, . In that case, the Calcutta High Court has held that the goodwill should not be valued separately, but should be included while evaluating the whole interest of the deceased partner in the firm. This view was taken on the basis of rule 7(c) of the Estate Duty Rules. Now, so far as rule 7(c) stands, it confines itself to the determination of the nature of property, and divides the various firms and the property that passes on the death into two categories, (i) immovable property, and (ii) movable property. Rule 7(c) runs as under:

7. (c) The share of a partner in a partnership shall be treated as an indivisible asset for the purposes of determination of its nature and locality. The share of a partner in a partnership is a movable property, notwithstanding that the firm owns immovable property.

30. It will be seen that this rule treats the share of a partner as an indivisible asset for purposes of determination of its nature and locality only. It does not concern itself with the method of valuation. We have seen earlier that the goodwill of a partnership is evaluated separately after taking into account the various features. Thus, we see no reason to hold, in view of rule 7(c), which is of limited operation, that the goodwill of the deceased's share in the partnership firm should not have been evaluated separately.

31. The Tribunal was thus, right, and the answer to the third question must, therefore, be in favour of the department, in valuing the goodwill of the firm. In view of these conclusions, we answer all the three questions in the affirmative, in favour of the department and against the assessee. The department is entitled to its costs, which we assess at Rs. 200. Counsel's fee is also assessed at the same figure.